

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HARRY DONALD NICHOLSON,
JR.,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 3:21-CV-0501-X-BK

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE
JUDGE

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. [Doc. No. 21]. A Texas jury found Petitioner Harry Donald Nicholson, Jr. guilty of aggravated assault and he unsuccessfully appealed his conviction in state court.¹ He then filed this federal habeas application, asserting only one claim for habeas relief: that his “conviction [was] in violation of due process because the evidence [was] legally insufficient.”² The Magistrate Judge concluded that this claim lacks merit because a reasonable jury could have found that the evidence was sufficient to support Nicholson’s conviction.


¹ Doc. No. 21 at 2.

² Doc. No. 1 at 6.

Nicholson filed objections, arguing that “[t]he jury could only speculate whether Nicholson perceived the risk” of his actions that caused the assault.³ Although Nicholson points to some evidence that he believes contradicts the jury’s verdict, he does not counter the Magistrate Judge’s conclusion that a reasonable jury could have believed the evidence that ultimately supported the verdict, and that the state presented enough evidence to support the jury’s conclusion. Accordingly, the Court **OVERRULES** Nicholson’s objections.

The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge and **DISMISSES WITH PREJUDICE** the petition.

IT IS SO ORDERED, this 21st day of February, 2023.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE

³ Doc. No. 22 at 6.